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TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1887.

No. 1025.

THE UNITED STATES, APPELLANT,

vs.

THE STATE OF LOUISIANA.

APPEAL FROM THE COURT OF CLAIMS.

FILED AUGUST 30, 1887.

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1 In the Court of Claims.

THE STATE OF LOUISIANA
vs.
THE UNITED STATES. } No. 15295.

I.—*Petition.*—*Filed September* 20, '86.—*J. R.*

To their honors the judges of the Court of Claims:

The petition of the State of Louisiana respectfully shows as follows, to wit:

I. That section V of an act of Congress entitled "An act to enable the people of the Territory of Orleans to form a constitution and State government, and for the admission of such State into the Union on an equal footing with the original States, and for other purposes," approved February 20th, 1811, Vol. II, S. L., p. 641, reads as follows, to wit: "And be it further enacted, that five per centum of the net proceeds of the sales of the lands of the United States, after the first day of January, shall be applied to laying out and constructing public roads and levees, in the said State, as the legislature thereof may direct."

II. That by and under the terms of said act there is now due your petitioner the sum of forty-three thousand seven hundred and twenty-eight dollars, which sum has been duly ascertained and certified according to law; but instead of being paid over to your petitioner, as by legal right it should be, the same has been credited without lawful authority, as will be hereinafter fully set out, upon certain alleged demands, for which your petitioner is in nowise legally liable.

III. And your petitioner further shows that, by sections I and II of the act of September 28th, 1850, IX S. L., p. 519, entitled "An act
2 to enable the States of Arkansas and other States to reclaim the 'swamp lands within their limits,'" it is enacted that the Secretary of the Interior shall make out lists and plats of all swamp and overflowed lands, made unfit thereby for cultivation, which shall remain unsold at that date, and grant them to the State; that at the request of the governor a patent shall issue to the State, and that on that patent the fee simple shall vest in the State. And by section IV of the same act its provisions are extended to and their benefits conferred upon each of the other States of the Union, in which swamp or overflowed lands are situated.

These lands, not being definitely located, were in many cases innocently taken up by individuals, who received title therefor from the General Land Office, and to remedy this difficulty Congress enacted the act of March 2d, 1855, X S. L., p. 634, by section II whereof it is provided: "That upon due proof by the authorized agent of the State or States, before the Commissioner of the General Land Office, that any of the lands, within the true intent and meaning of the act aforesaid, the purchase money shall be paid over to the said State or States;" that by and under these provisions of said laws there is now legally due and owing to your petitioner the sum of twenty-seven thousand six hundred and fifty-seven $\frac{44}{100}$ dollars, which said sum has been duly and legally ascertained and certified; but instead of being paid over to your petitioner, as by legal right it should be, the same has been credited without lawful authority, as will be hereinafter

fully set out, upon certain alleged demands, for which your petitioner is in nowise legally liable.

IV. That by an act of Congress of August 5th, 1861, entitled "An act to provide increased revenues from imports, to pay interest on the public debt, and for other purposes" (XII S. L., 292), a direct tax of twenty millions of dollars was laid upon the United States, and
3 apportioned to the States, the apportionment to Louisiana being three hundred and eighty-five thousand eight hundred and sixty-six and two-thirds dollars.

That in said act elaborate machinery is provided for the collection of these apportionments from the people of the United States resident in the different States respectively.

That subsequently, to wit, on June 7th, 1862, there was enacted by Congress "An act for the collection of direct taxes in insurrectionary districts within the United States, and for other purposes," in the first section whereof it is provided that the direct tax apportioned among the several States and Territories respectively shall be apportioned and charged in each State and Territory" as they were enumerated and valued under the last assessment and valuation thereof made by the State prior to January 1st, 1861. "And each and every parcel of the said lands, according to said valuation, is hereby declared to be, by virtue of this act, charged with the payment of so much of the whole tax laid and apportioned by said act upon the State or Territory wherever the same is respectively situated, and shall bear the same direct proportion to the whole amount of the direct tax apportioned to said State or Territory as the value of said parcels of land shall respectively bear to the whole valuation of the real estate in said State or Territory according to the said assessment and valuation." That said tax was a direct tax, laid in accordance with the provisions of the Constitution of the United States.

V. That of the apportionment of Louisiana a large amount was collected directly from citizens who were real estate owners, to wit: About two hundred and sixty-eight thousand five hundred and fifteen $\frac{12}{100}$ dollars; the State of Louisiana never having in any manner assumed liabilities for any portion of said tax whatever, as it was provided
4 in the first-cited statute States might do as to this apportionment to them respectively.

But Louisiana being a State in insurrection, and there being no provision in the second statute cited, to wit, the one for collection of the tax in States in insurrection for the assumption of the tax by these States, it was, of course, impossible for the State of Louisiana in any wise to have assumed such liability, or in any manner whatsoever to have become legally liable for said tax or any portion thereof.

VI. That notwithstanding the State of Louisiana is not, and never was, in any mode or form liable for said direct tax, or any portion thereof, nevertheless, by some legerdemain of book-keeping, or of legal construction, an account has been opened on the books of the Treasury Department against the State of Louisiana, and the whole amount of the apportionment of said direct tax charged up against that State. Then the State is credited with the aggregate of the amounts collected from individuals owning real estate in said State, and then the sums alleged to be due to the State in paragraph II and III of this petition have also been credited, as aforesaid, against the liability for the balance of this direct tax.

VII. That demand has been duly made upon the Treasury of the United States for the payment of the sums due to the State of Louisiana as alleged in paragraph II and III hereof, but the same has been refused, upon the ground and for the reason, as assigned, that the same have been duly credited to the State of Louisiana for and on account of her liability to the United States for the balance of these direct taxes.

VIII. That no assignment or transfer of said claim, or of any part thereof, or interest therein, has been made except as stated herein.

5 Wherefore your petitioner prays judgment for the sum of seventy-one thousand six hundred and forty-three $\frac{16}{100}$ dollars.

EARLE & PUGH,
Plaintiff's Attorneys.

STATE OF LOUISIANA,
City of New Orleans, ss:

Before me, a notary public of said State, in and for said city, personally came this day, 16th September, 1886, who is personally known to me, and being first duly sworn, deposes and says, that he is the governor of the State of Louisiana, and that he has read the annexed petition and that the matters and things herein set out as of his own knowledge are true, and that the others therein set out he believes to be true.

S. D. MCENERY,
Governor of Louisiana.

Sworn to and subscribed before me, this 16th day of September, 1886.
[SEAL.] B. F. BRYAN,
Notary Public.

6 II.—*Defendant's motion to dismiss for want of jurisdiction. Filed November* 12, 1886.

Now come the defendants and move to dismiss the above-entitled cause cause for want of jurisdiction, for the following reason:

Because this court has neither original nor concurrent jurisdiction under the Constitution and laws of the United States to hear and determine a cause in which a State is a party in a suit against the United States.

H. J. MAY,
Assistant Attorney.

7 III.—*Order of the court overruling motion to dismiss, and opinions thereon.*

At a Court of Claims held in the city of Washington, D. C., on the 24th day of January, A. D. 1887:

It was ordered that the motion of the defendants to dismiss the claimant's petition for want of jurisdiction be overruled.

8 *Opinion on motion to dismiss.*

RICHARDSON, C. J., delivered the opinion of the court:

The claimant, by petition filed September 20, 1886, presents claims founded upon two acts of Congress.

The defendants moved to dismiss, "because," as alleged, "this court has neither original nor concurrent jurisdiction under the Constitution and

laws of the United States to hear and determine a cause in which a State is a party in a suit against the United States."

Article 2, section 3, of the Constitution provides that, "in all cases affecting ambassadors, other public ministers and consuls, and those in which a State shall be a party, the Supreme Court shall have original jurisdiction."

As to this clause it has been authoritatively decided, by the unanimous opinion of the Supreme Court, that it does not confer upon that court exclusive jurisdiction in such cases, and that it is within the power of Congress to grant to inferior courts of the United States jurisdiction in cases where the Supreme Court has been vested by the Constitution with original jurisdiction only. (Ames v. Kansas, 111 U. S., 449.)

And if the Constitution were otherwise interpreted, parties might still waive their constitutional privileges. The seventh article of amendment provides that "in suits at common law, where the value in controversy shall exceed twenty dollars, the right to trial by jury shall be preserved," but it has long been provided by statute that issues of fact may be determined by the court, without the intervention of a jury, where the parties in writing waive the jury (Rev. Stat., 649); and even independently of that statute, parties might always have waived trial by jury. (Henderson's Distilled Spirits, 14 Wall., 44, 53.)

We have no doubt that Congress may submit controversies of the United States with States to any tribunal, judicial or otherwise, which the States may be willing to accept.

The assistant to the Attorney-General argues that concurrent jurisdiction has never been granted to the Court of Claims to hear and determine cases in which the claimants are States of the Union, and he cites Revised Statutes, section 687, as showing that to the Supreme Court alone is granted jurisdiction of such cases.

That section is as follows:

"SEC. 687. The Supreme Court shall have exclusive jurisdiction of all controversies of a civil nature where a State is a party, except between a State and its citizens, or between a State and citizens of other States, or aliens, in which latter cases it shall have original, but not exclusive jurisdiction."

The answer to the objection to the jurisdiction of this court on account of that section is manifest. It has no application to claims against the United States, because Congress has never consented that the Government may be sued except in this forum and in a way and upon causes of actions specially pointed out. There are not now and never have been any "controversies" with the United States "of a civil nature where a State is a party" to which this section could apply, and Congress in enacting the provisions of that section did not contemplate suits against the United States, which, at the time of its first adoption, were unknown in this country.

That section and the constitutional provision upon which it is founded evidently refer to suits in which one party or the other is involuntarily drawn, and not to those which may result from agreement, as do all suits in this court. It was said by Mr. Justice Bradley in Russell v. The United States (13 Wall., 664, and 7 C. Cls. R., 273), "the erection of the Court of Claims itself, and the giving to parties the privilege of suing the

Government therein, though dictated by a sense of justice and good faith, were purely voluntary on the part of Congress."

In the present case the claimants and the defendants are here voluntarily by act of Congress (if the former be included in the terms of the general jurisdiction act, as we think they are), and neither can object to what they have agreed to.

The assistant to the Attorney-General further insists that section 1059 of the Revised Statutes, under which the present action is instituted, does not include claims by States. That section provides that "the Court of Claims shall have jurisdiction to hear and determine the following matters: First. All claims founded upon any law of Congress, or upon any regulation of an Executive Department, or upon any contract, expressed or implied, with the Government of the United States." * * *

It is true that States are not mentioned, and it is equally true that no parties whatever are specifically named. The court is given jurisdiction over the subject-matters therein described, and no parties having claims coming within the classes enumerated are excluded, except aliens in certain cases. (R. S., sec. 1068.) It is the subject-matter, and not the parties, which determines the jurisdiction. Corporations, counties, towns, and cities are not mentioned, and yet their right to bring actions in this court has never been questioned. Many cases by corporations have been maintained here and in the Supreme Court on appeal. (New Bedford and New York Propeller Company, 14 Wall., 671, affirming the judgment of this court, 5 C. Cls. R., 270; Home Insurance Company, 22 Wall., 99, and 8 C. Cls. R., 449; State National Bank and Merchants' National Bank, of Boston, 96 U. S. R., 30, and 10 C. Cls. R., 519, and others more recent.)

A State is a public corporation (Walker's American Law, sec. 92), making contracts, entering into obligations, and doing business in many things like individuals, and in all those matters they have the same rights and remedies in court as do individuals under like circumstances, and general laws usually apply to them in like manner. It is stated in Dillon on Corporations, sec. 31 (14), upon the authorities there cited, that "a State, as it can make contracts and suffer wrongs, so it may, for this reason, and without express provision, maintain, in its corporate name, actions to enforce its rights and redress its injuries."

Three cases in which States are claimants have been brought in this court, one under the general jurisdiction act (State of Texas Case, 7 C. Cls. R., 301), and two under the Bowman act, which in like manner confers a peculiar jurisdiction over subject-matters without naming the parties. (State of Illinois and State of Texas, 20 C. Cls. R., 342,394.) In each of these three cases the Attorney-General submitted to the jurisdiction of the courts without objection, and up to this time it seems to have been conceded on all sides that a State might maintain an action in this court. This is the first case in which the jurisdiction has been questioned.

Attorney-General MacVeagh had no doubt of the right when, in 1881, he advised the Secretary of the Treasury to retain out of an appropriation for the State of Kansas a sum sufficient to cover a controverted claim in favor of the United States, in order that the State might institute an action in the Court of Claims, where the claim of the Government could be pleaded as a set-off and judicially determined. (XVII Op. Att'ys-Gen.)

There is no good reason why a State should be excluded from the right of suing in this court like other claimants. The court was established not only to furnish a tribunal for the benefit of claimants but to relieve Congress from the burden of investigating controverted claims against the Government. If a State could not sue here it could go to Congress and nowhere else for redress, and to that extent the expected relief would be defeated. We cannot, by construction and implication, find that Congress, in the acts conferring general jurisdiction over certain subject-matters, intended to exclude States from its benefits.

The motion to dismiss is overruled.

NOTT, J., delivered the following opinion:

Upon the defendants' motion to dismiss this case for want of jurisdiction, I have reached the following conclusions:

(1) Jurisdiction relates both to the subject-matter of the action and the person of the parties. When a court is invested with jurisdiction of the subject, any person having capacity to bring an action may enter the court in the character of plaintiff, and maintain his action, unless there be some express restriction which excludes him from the court.

(2) The case of Ames v. The State of Kansas (111 U. S. R., 465) seems to me conclusive as to the right of a State to sue in courts in which it is not liable to be sued; i. e., to enter a court as plaintiff, though the court, being without jurisdiction of the person of the State, could not compel it to come in as defendant.

(3) The language of the judiciary act (1 Stat. L., p. 73, § 13), taken literally, does certainly confer upon the Supreme Court "exclusive jurisdiction," save in certain excepted cases, of which this case is not one; but the judiciary act was not obligatory upon Congress, and did not preclude Congress from subsequently creating a tribunal in which a State might voluntar[il]y enter as plaintiff, and, like other bodies corporate having capacity to sue, maintain an action against the General Government; and there is nothing in the act creating this court to indicate that the several States, and no other persons, natural or corporate, shall be excluded from the legal redress which it was intended to give. Finally, this court is but a channel to the Supreme Court, the United States having an appeal in every case, and the question of the claimant's rights and the question of this court's jurisdiction can be considered there at the same time.

11 IV.—*General traverse.*—*Filed March* 19, 1886.

And now comes the Attorney-General, on behalf of the United States, and answering the petition of the claimant herein, denies each and every allegation therein contained; and asks judgment that the petition be dismissed.

And as to so much of the said petition as avers that the said claimant has at all times borne true faith and allegiance to the Government of the United States, and has not in any way voluntarily aided, abetted, or given encouragement to rebellion against the said Government, the Attorney-General, in pursuance of the statute in such case provided, denies the said allegations, and asks judgment accordingly.

ROBERT A. HOWARD,
Assistant Attorney-General.

12 V.—*Plea of set-off and plea to the jurisdiction.—Filed March* 31, 1887.

DEFENDANTS' SPECIAL PLEA OF SET-OFF.

The defendants, for special answer to the claimant's petition by way of set-off, say that at the time of the filing of the petition herein and long prior thereto the said claimant was, and is now, indebted to the defendants in the sum of $316,676.13 as a balance of direct tax, under the act of Congress approved August 5, 1861, entitled "An act to provide increased revenue from imports, to pay interest on the public debt, and for other purposes," and that section 1766 of the Revised Statutes of the United States provides "that no money shall be paid to any person for his compensation who is in arrears to the United States until he has accounted for and paid into the Treasury all sums for which he may be liable," &c.

Wherefore the defendants pray that $74,784.45 may be set off against the petitioner's claim herein, and that the defendants may have judgment for the residue of said $316,676.13, to wit, $243,891.68.

13 SPECIAL PLEA TO THE JURISDICTION OF THE COURT.

Now come the defendants and move to dismiss certain items of the claim herein, founded upon the provisions of the acts of Congress approved March 2, 1855, and March 3, 1857, entitled "An act for the relief of purchasers and locators of swamp lands." (9 Stat. L., p. 519; 10 ibid., p. 634), for the reason that the same were not presented to the Court of Claims within six years after they first accrued. They are as follows: Report No. 45789, for $1,340.84 (Rec., p. 28); Report No. 45790, for $3,500.70 (Rec., pp. 30–1); Report No. 45791, for $4,758.24 (Rec., pp. 33–34); Report No. 45792, for $5,837.95 (Rec., pp. 36-37); Report No. 46035, for $6,448.71 (Rec., pp. 39–40); Report No. 43036, for $1,350.41 (Rec. pp. 42–43); Report No. 46290, for $4,421.21 (Rec., pp. 45–46); Report No. 46356, for $2,437.14 (Rec., pp. 48–49).

HEBER J. MAY,
Assistant Attorney.

Filed Mar. 31, 1887.

14 VI. *Motion to amend petition.—Filed April* 26, 1887.

To the honorable the judges of the Court of Claims:

Now comes the plaintiff, by his attorneys, Earle and Pugh, and asks leave to amend the petition in the following particular, to wit: That the prayer for judgment be the sum of seventy-one thousand three hundred and eighty-five dollars and eighty-three cents (71,385.83), instead of the sum of seventy-one thousand six hundred and forty-three $\frac{16}{100}$ dollars.

EARLE AND PUGH,
Att'ys for Pl'ff.

April 25, '87.

Allowed in open court May 2, 1887.

W. A. R., *C. J.*

15 VII.—*Findings of fact and conclusion of law.*

FINDINGS OF FACTS.

The court, upon the evidence, finds the facts as follows:

I.

That the amount found due by the Commissioner of the General Land Office, June 30, 1885, to the State of Louisiana from the United States, on account of indemnity for swamp lands purchased by individuals within said State prior to March 3, 1857, is $23,855.04. (9 Stat. L., 510; 10 ib., 634; 11 ib., 251.)

II.

That the amount found due by said Commissioner to the State of Louisiana from the United States on account of the 5 per centum fund, accruing between July 1, 1882, and June 30, 1886, is $47,530.79. (2 Stat. L., 641.)

III.

Total amount found due said State on account of both funds, $71,385.83.

IV.

That the First Comptroller of the Treasury, at different times previous to the filing of the petition in this suit, admitted and certified the sums aforesaid to be due to the said State on account of the 5 per cent. fund and the indemnity for swamp lands purchased by individuals within said State, but directed the said amounts to be credited on an account which had been opened in the Treasury Department against said State charging her with the direct taxes assessed under the acts of Congress of 1861 and 1862. The sums were credited as directed.

V.

That no proof was adduced or filed before the Commissioner of the General Land Office showing the swampy character of the lands sold to individuals for which indemnity is asked by the agent of the State of Louisiana, but the Commissioner resorted to the field notes of the public surveys of the surveyor-general for such proof. This method of
16 proving the swampy character of the lands had been resorted to by the Commissioner as early as 1850, and was adopted by him as proof of the swampy character of the land for which indemnity is asked in this case.

CONCLUSION OF LAW.

Upon the foregoing findings the court holds, as conclusions of law, that the State of Louisiana is entitled to recover the sum of $47,530.79 under the law of 1811, and the sum of $23,855.04 under the act of 1855, and that the counter-claim of the defendant be dismissed.

VIII.—*Opinion.*

WELDON, J., delivered the opinion of the court:

The State of Louisiana, in September, 1886, filed a petition in this court, alleging against the United States two causes of claim, the first founded on the statute of February 20, 1811, entitled "An act to enable the people of the Territory of Orleans to form a constitution and State government" (2 Stat. L., p. 641), the last section of which reads as follows:

"And be it further enacted, That 5 per centum of the net proceeds of the sales of the lands of the United States after the first day of January shall be applied to laying out and constructing public roads and levees in the said State as the legislature thereof may designate."

The second cause of action as alleged is founded on the act of September 28th, 1850, entitled "An act to enable the State of Arkansas and other States to reclaim the swamp land within their limits" (9 Stat. L., 519); and the further statute of March 2d, 1885, entitled "An act for the relief of purchasers and locators of swamp and overflowed land" (10 Stat. L., 604).

Under the first act it is alleged the defendants owe the petitioner the sum of $47,530.79, and under the latter the sum of $23,855.04, aggregating the sum of $71,385.83.

To these claims the United States interpose, first, the statute of limitations as to the demand under the act of March 3, 1855, and, second, a counter claim as to the alleged right under both statutes.

The statute of limitation, within which suits must be brought of the character disclosed by the petition, prescribes a limitation of six years; and if prior to September 20, 1880, the claimant's cause of action was complete and consummate, then the objection is well taken, and as to the demand under the act of 1855 the petition must be dismissed. (Rev. Stat., § 1069.)

The statute of 1855 was passed to remunerate the States for land located by grants from the United States for lands which, from their character as swamp and overflowed land, had become the property or right of the State under provisions of the act of September 28, 1856, commonly known as the "Swamp land act;" and, to effectuate that policy, it is provided in the second section of said act of 1855:

"That upon due proof, by the authorized agent of the State or States, before the Commissioner of the General Land Office, that any of the land within the true intent and meaning of the act aforesaid has been sold by the General Land Office, the purchase-money shall be paid over to the said State or States."

The question arises under the various acts, at what time did the claimant have a right to bring suit in this court under the law of our general jurisdiction? If the two acts, the one of September 20, 1850, and
17 the one of March, 1855, made consummate its right, then long before the petition was filed the limitation had ceased, and the petitioner is now without remedy in the judicial department of the Government. If the right to sue was under said acts merely inchoate, and did not mature until the happening of a subsequent event, then the right to sue became perfect upon the happening of that event; and the limitation of six years commences from the date of the event. If, in the ab-

sence of any action upon the part of the Commissioner of the General Land Office, the claimant had brought suit, would not a plea embracing the facts contemplated by the second section of the act of 1855 be a good plea in bar? If so, then the right of action was not complete under the acts of 1850 and 1855, unaided by the agency of the Commissioner of the General Land Office under the second section of the act of 1850.

When the right of action depends upon a contingency, the statute does not begin to run until the contingency happens. (Jones v. Lightfoot, 10 Ala., 17.) It is a general rule that the statute of limitations begins to run from the time when the right of action accrued. (Odlin v. Greenleaf, 3 N., 270; Hall v. Vandegrift, 3 Binn., 374; Withers v. Richardson, 5 T. B. Monr., 94.)

The cause of action legally stated by the petition, and sustained by the facts, in its unity, is composed of the rights of the claimant, originated by the act of 1850, recognized and enlarged by the act of 1855, and consummated by the agency of the Commissioner of the General Land Office under the second section of the last-named act.

But aside from the provisions and phraseology of the second section of the act of 1855, what are the rights of the claimant in relation to its cause of action for the recovery of the proceeds of the sale of lands sold in violation of the petitioner's right under the act of September 28, 1850? The grant made in the act of 1850 was never revoked, but was recognized by the act of 1855; and the sales of lands by the United States after the passage of the law of 1850 was a sale by the grantor of the property of the grantee, a sale of the holder of the legal title in violation of the rights of the equitable owner; so that the proceeds of the lands became, in the hands of the Government, a trust fund, and as such would be unaffected by the statute of limitations until there was a disavowal of the trust by the refusal of the trustee to recognize the rights of the cestui que trust.

The law of 1855 did not assume to revoke or invalidate any of the guarantees under the law of 1850, but simply to provide that the proceeds of the sale of swamp land should stand as the equitable representative of the land sold by the Government, in violation of the purposes of the act of 1850. It is not necessary to invoke the doctrine of trust to sustain the jurisdiction of the court, and we only refer to it as tending to strengthen the reason in favor of our jurisdiction. As will be seen by the findings, the act of the Land Commissioner, which under the law made the cause of action complete, did not occur beyond six years from the bringing of the suit; so that the cause of action accrued to the claimant within the limitation prescribed by section 1069. The statute of limitations as to the claim under the act of 1855 being disposed of, the claim, in its entirety, is submitted to the consideration of the court upon its merits as a legal demand against the Government. The affirmative
18 right of the claimant to recover under both laws the sum of $71,385.83 is not seriously disputed, and the controversy arises as to the payment of it by the application of the set-off or counter-claim.

Having examined the claim of the petitioner as to the objections urged by the defendants, we now consider the set-off filed as a counter-claim against the petitioner. The Government officers insist that there is due the United States, under the act of August 5, 1861 (12 Stat. L., 292), commonly

known as the "Direct-tax Act," a sufficient amount to discharge the liability of the United States to the claimant, because of the delinquency of the defendants in the payment of the proceeds under the various statutes herein stated. As against the set-off, it is urged that the fund represented by the amount due to the claimant is in the hands of the State of Louisiana, a trust fund, to be used for a specific and definite purpose; and that whatever may be the legal liability of the State for the unpaid amount of the direct tax, it is not a proper matter of set-off in this proceeding; that the tax is not a legal liability on the part of the State, but a delinquency on the part of the citizens of the State of Louisiana; that Congress never intended that it should be a tax against the State unless voluntarily assumed by the State, and that under the Constitution it is not within the constitutional power of Congress to assess a tax against a State in its political and municipal capacity. We will consider some of the points made in the inverse order stated:

The power of Congress to pass a direct-tax act, and so apportion the tax as that in law it becomes an assessment against the State as a political department of the Government, involves a discussion as to the constitutional structure and mold of the Government, and might be very pertinent in this connection were it not for our conclusions as to the statute originating and recognizing the subject-matter of the counter-claim. Whatever may be said of the power of Congress in the abstract, it is sufficient in this case to hold that by the policy and purpose of the act of 1861 Congress intended to distribute to the State of Louisiana the sum of $385,886.67 as its share of the $20,000,000 levied by the act of 1861 to be collected from the citizens of the United States living in that portion of the United States known as the State of Louisiana. The assessment was made against and upon the property of citizens of the United States, and dealt with individuals, except as to the mere mode of distribution.

It was an application of that theory of constitutional law which holds that the powers of the General Government operate with reference to the scheme of Federal authority, upon the individual citizen inhabiting the territory of the United States, as plainly indicated by the means it provided for the assessment and collection of the tax.

The fifty-third section of the act of 1861 provides for a condition upon which the claim of the Government is predicated in this case, clearly indicating that in the absence of such condition there would be no liability upon the part of the State. It is not pretended that the State of Louisiana, by any act of its legislature, or other authoritative power, either during or since the war, assumed the payment of its share of the $20,000,000 assessed under the act of 1861. The citizen failed to pay and the State failed to assume; so that in 1862 Congress had to pass the act of June 7, 1862, providing a more efficient mode for the col-
19 lection of tax in the insurrectionary States, of which Louisiana was one. The fact that section 53 provides for a set-off between a State or Territory and the United States will not avail the defendants in their theory of construction, unless it is shown that the State had assumed the tax, because upon that assumption is based the right and power of deduction.

Although this is a controversy between States, the one general and the other local, the same rules of law apply, upon the subject and doctrine of

set-off, that prevail in judicial controversies between citizens litigating the most ordinary interests of life. The legal character of set-off is very aptly defined by the report of the Senate Judiciary Committee, in which it is said set-off "means the application of a valid demand against the creditor in satisfaction or determination of his claim." The claim, in order to be a good set-off, must be between the same parties, upon debts mutually due in the same character. This is the settled construction of the English statute which introduced into the law of England the doctrine of set-off, and it has been followed by American courts in all jurisdictions where the matter has been the subject of judicial determination. (1 Chitty on Contracts, 1266.)

Citizens owe allegiance and receive protection, and coincident with that obligation and right they owe taxes when properly assessed on their property. States perform the functions of administration, and do not contribute to sustain the National Government in the payment of taxes, unless they voluntarily assume the performance of that duty by the consent and request of the national authority.

A case similar in legal substance to the one at bar arose with the State of Georgia in the execution of the act of 3d of March, 1879. In the sundry civil service bill of that year it was enacted that the State of Georgia should be reimbursed for expenses incurred in the suppression of the hostilities of the Creek, Seminole, and Cherokee Indians in the years 1835, 1836, 1837, and 1838.

At the time the State authorities sought to receive from the Government the indemnity provided by said act there was on the books of the Treasury Department an unpaid balance under the direct-tax law of 1861, and the question was raised whether that unpaid balance could in law be set off against the amount to which the State of Georgia was entitled under the act of 1879. Upon the question of the liability of the State for an unpaid balance, under the act of 1861, in the absence of any assumption on the part of the State, we quote from the very able opinion of Mr. A. G. Porter, First Comptroller of the Treasury. Upon the fact that the State of Georgia never assumed the payment of the direct tax, he said:

"If the sum apportioned is a debt owing by the State of Georgia as a political corporation, then it may be assumed that it ought to be so credited. If, however, it is a debt owing by the persons within that State, whose lands have been taxed, and not by the State itself, then the payment ought not to be withheld. * * * The privilege of the State to assume implies that the debt before the assumption was not its own. Before the adoption of the Constitution the person whose property was charged with the tax owed the tax to the State because the State imposed it, and levied and collected it. Since the adoption of that instrument the United States has imposed the tax, and has itself levied and collected it. The obligation of the citizen is therefore to the Union and not to the State, and he, and not the State, is the debtor."

It is not necessary to cite further authorities to establish the character of the claim sought to be set off against the demand of the claimant, its origin under a statute having the provisions of the act of 1861; the legislation of Congress, providing means and directing the mode of collecting the tax, the right given to the States to assume the share allotted to each State, the act of 1862 providing for the collection of

direct taxes in insurrectionary districts, are sufficient to indicate the legal character of the debt alleged in the set-off. The conclusion resulting from such reasoning is that the claimant recovers the sum of $71,385.83, and that the counter-claim be dismissed. Judgment will be entered for $71,385.83.

21 IX.—*Final judgment.*

At a Court of Claims held in the city of Washington, D. C., on the 2nd day of May, A. D. 1887, judgment was ordered to be entered as follows:

The court, on due consideration of the premises, find for the claimant, and do order, adjudge, and decree that the counter-claim of the defendants be dismissed, and that the said claimant, the State of Louisiana, do have and recover of and from the United States the sum of seventy-one thousand three hundred and eighty-five $\frac{14}{100}$ dollars ($71,385.83).

22 X.—*Application of defendants for, and allowance of, appeal.*

From the judgment rendered in the above-entitled cause on the 2d day of May, 1887, in favor of claimant, the defendants, by their Attorney-General, on the 16th day of June, 1887, make application for, and give notice of, an appeal to the Supreme Court of the United States.

A. H. GARLAND,
Attorney-General.

Filed and allowed June 16, 1887.

WILLIAM A. RICHARDSON,
Chief Justice.

23 XI.

In the Court of Claims.

THE STATE OF LOUISIANA
vs.
THE UNITED STATES. } No. 15295.

I, Archibald Hopkins, chief clerk of the Court of Claims, do hereby certify that the foregoing are true transcripts of the pleadings in the above-entitled cause; of the motion to dismiss petition; of the order of the court overruling the same, and opinions thereon; of the general traverse; of the plea of set-off and plea to the jurisdiction; of the amended petition; of the findings of fact and conclusion of law; of the opinion of the court; of the final judgment and application of defendants for, and allowance of appeal to the Supreme Court.

In testimony whereof, I have hereunto set my hand and affixed the seal of said court at Washington, this 20th day of August, A. D. 1887.

[SEAL.] ARCHIBALD HOPKINS,
Chief Clerk Court of Claims.

(Indorsement on cover:) No. 1025. The United States, appellant, vs. The State of Louisiana. Court of Claims. Filed August 30, 1887.

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